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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,691	07/14/2003	Samuel Clayton Muggide	33277/US	3743

7590 07/12/2005

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/617,691

Applicant(s)

MUGGRIDE ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/14/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 1, the term "frozen fruit filled pie" is unclear because it is not known if this refers to the frozen fruit or the whole pie if frozen. If the whole pie is frozen, then the body of the claim does not commensurate with the preamble because there is no step of freezing the pie.

In claim 5: Line 1, the term "the formula" is unclear because it is not known what formula the claim is referring to.

In claim 6: Line 6, the phrase "and colors, etc." is indefinite because it is not known what is included in the term etc.; the scope of the claim cannot be determined.

In claim 9: Line 1, the reference to "the manufacturing" is unclear because it not known what manufacturing the claim is referring to.

In claim 12, what does applicant mean by "the distribution of said starch and gum within the IQF fruit"? The suspension is deposited over the fruit; thus, how can the starch and gum migrate to be within the fruit?

In claims 13-14, the term "rapid" is indefinite because it is relative term; what would be considered as rapid.

In claim 15: Line 2, the term "the ingredient" is unclear because it is not known what ingredient the claim is referring to.

Claim 16 has the same problem as claim 1; additionally, the term "the ingredients" has the same problem as in claim 15.

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Claims 6, 20, 21 and 39,40 have the same problem as claim 5.

Claims 21, 30, 40 have the same problem as claim 6.

Claims 24, 37 have the same problem as claim 9.

Claims 26, 42 has the same problem as claim 12.

Claims 27, 33-34, 43-44 have the same problem as claims 13-14.

In claim 28, the term " rapid" has the same problem as in claims 13-14. Additionally, what does applicant mean by " below above degrees"; what degrees is the claim is referring to.

Claim 35 has the same problem as claim 1.

In claim 38, " said mixing and stirring elements" lack antecedent basis.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann in view of Wallin et al.

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Neumann discloses a flavoring suspension. The suspension comprises 13.6% sugar, 2.3% modified starch, .25% xanthan gum, 45.46% high fructose corn syrup and flavoring.

Neumann does not disclose the amount of starch claimed and the viscosity profile claimed.

Wallin et al disclose a filling suspension. They teach to increase the amount of starch to adjust the viscosity of the suspension. (see col. 5 lines 1-22)

It would have been obvious to one skilled in the art to increase the amount of starch in the suspension when desiring to increase the viscosity of the suspension. The use of starch to modify the viscosity is known in the art as shown by Wallin et al. It would have been obvious to one skilled in the art to adjust the viscosity profile of the suspension depending upon its intended use.

Claims 1-28, 35-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of prior art in view of Newman and Wallin et al.

Applicant discloses on page 1 of the specification the conventional step of making frozen fruit filled pie. The process comprises the steps of mixing ingredients to create a pie dough, form the dough into a shell, adding IQF fruit into the shell and applying a top sheet of pie dough over the pie shell. The pie then conveyed through a freezer and to packaging stations. The fruits remain frozen.

The prior art does not disclose adding a suspension comprising ingredients as set forth in claims 5, 20 and 29 over the fruit and the steps for forming the suspension.

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Neumann discloses a flavoring suspension which is used in pastries. The suspension comprises 13.6% sugar, 2.3% modified starch, .25% xanthan gum, 45.46% high fructose corn syrup and flavoring.

Wallin et al disclose a filling suspension. They teach to increase the amount of starch to adjust the viscosity of the suspension. (see col. 5 lines 1-22)

The suspension disclosed by Neumann can be used in pastries; thus, it would have been obvious to one skilled in the art to use the flavoring suspension in pie because pie is a type of pastry. It would have been obvious to one skilled in the art to use the suspension of Neumann over the fruit in forming the pie to obtain flavoring and to eliminate the steps of adding the dried ingredients as set forth in the prior art method. The suspension contains liquid, dry sweetener, minor ingredient, flavors and stabilizers which are the same ingredients that are added to the fruit in the prior art method; thus, its addition to the fruit is not contraindicated. Neumann does not disclose the amount of starch claimed. It would have been obvious to one skilled in the art to increase the amount of starch in the suspension when desiring to increase the viscosity of the suspension. The use of starch to modify the viscosity is known in the art as shown by Wallin et al. It would have been obvious to one skilled in the art to adjust the viscosity profile of the suspension depending upon its intended use.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brain et al disclose non-fat foods and methods for preparing them.

Dally et al disclose shelf-stable bar with crust and filling.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 11, 2005

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Choup1702*